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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,130	02/02/2001	Dimitra G. Gerogianni	1048JW-80739	9365

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EXAMINER	
SAETHER, FLEMMING	

ART UNIT	PAPER NUMBER
3677	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/776,130	GEROGIANNI, DIMITRA G.	
	Examiner	Art Unit	
	Flemming Saether	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The maximum delivery time ***and*** the indication of importance is considered new matter because the specification has maximum delivery time and indication of importance as an alternative (note "or" page 9, line 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11, 13-21, 23-34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409), Harrington (US 5,895,454) and Chui (US 6,657,702). Cupps discloses the general concept of brokering food orders over the Internet wherein a plurality of buyers have

access to a database of a plurality of unaffiliated restaurants that deliver food (Fig. 1 and 7). Each of the buyers inputs their location and the broker displays restaurants that deliver to that location and indicates specials (Fig. 8). Each of the restaurants displays a menu of available food items and price (Fig. 9), any one of which may be considered "special". Once an item is found, the buyer initiates a transaction and is given a response or confirmation from the restaurant which includes a delivery time (column 11, line 26-27). The delivery time is real time and inherently would include any backlog on the part of the seller since the seller is the one providing the delivery time (column 11, line 11-12). Cupps does not disclose the real time delivery time being provide prior to a selection be made by the customer. Hanson discloses a food order and delivery system wherein the real time delivery time, based at least in part on actual deliveries, is communicated to the customer as a transaction is being made (column 16, line 64-68) so the customer can take that into account prior to placing an order. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to communicate the real time delivery time to the customer in Cupps prior to the order being placed so that the customer could make a more informed decision. Modified Cupps does not disclose the real time delivery time communicated to the customer prior to a transaction being initiated. Harrington discloses a system using the internet where in addition to other criteria such as price etc... the delivery time is included to the customer in a hierarchical scheme, in other words rank, form a plurality of sellers for comparison to the customer so that a determination on purchasing an item can be based on the delivery time (column 5, lines 25-61) and teaches to include a maximum

delivery time preference (column 5, line 26-27). Harrington further teaches to provide alternatives to the customer if the criteria is not met (column 6, lines 4-9). At the time the invention was made, it would have been obvious for the person of ordinary skill in the art to communicate the real time delivery time to the customer in modified Cupps in a manner as disclosed in Harrington so that delivery time could be used by the customer as criteria for determining which food item to order before beginning any transaction. Cupps does not disclose an indication of the importance of the delivery time to the buyers. Although it is generally well known for a buyer to indicate the importance of a delivery time, the reference to Chui has applied as disclosing the importance of the delivery time. In that regard, Chui's Fig. 2D shows what has become standard practice for internet commerce where a buyer can select the how important shipping is based on cost factors (at 240). Therefore, the person of ordinary skill in the art, at the time the invention was made, would have recognized to apply the same principles to the food delivery service disclosed in Cupps. Where the buyer would pay more for a special delivery based on how important the delivery time is to the buyer. Chui further discloses three different delivery schedules: "standard mail", "USPS Priority Mail" and "FedEx" which would be analogous to the delivery being very important, important, and unimportant. Finally, the time as which the buyer indicates the delivery time preferences would have been obvious to vary including to the time of registering because the sequence of the steps is not critical and would not effect the final product.

Claims 12, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409), Harrington (US 5,895,454) and Chui (US 6,657,702) as applied to claims 1, 13 and 24 above and further in view of Cotter (US 4,797,818). Cotter teaches the selection of a restaurant or seller for a delivery order automatically based on real time delivery time (column 2, line 2, line 21-31). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide for the automatic selection of a seller in modified Cupps based on real time delivery time as disclosed in Cotter in order to save time to the customer.

In response to Remarks

Applicant initially argues the 112 first paragraph rejection arguing that the examiner has filed to establish a *prima facie* case why the person of ordinary skill in the art was not in possession of the invention, as now claimed, at the time the invention was filed. Specifically, applicant points to the originally filed paragraph at page 8, lines 23-28. In response, the examiner fails to see how the referenced paragraph teaches the maximum delivery time preference and an indication of how important the delivery time is. The paragraph indeed discloses the "maximum delivery time preference" but, makes no mention of its importance. The disclosure that it "may be represented in any appropriate manner" is not an indication of importance. Furthermore, even the person of ordinary skill in the art would not come to the conclusion that both the maximum delivery time preference and the importance of the delivery time is being disclosed in

the referenced paragraph particularly in view of the disclosure on page 9, line 2 which discloses them only as an alternative as discussed in the above rejection.

Applicant next argues that the combination of Cupps, Hanson, Harrington and Chui also fails to disclose the delivery information including a maximum delivery time and an indication of the importance of the delivery time. Particularly, applicant argues that Chui dose not disclose storing the importance of the delivery time as a buyer's preference information since in Chui, the delivery information is provided at check out. In response, the claims do not require the importance of the delivery time be stored as a buyer preference. They do not have any requirement as to when the importance of delivery be provided; the claims only require it be contained in a database but, is not specific as to when the database be made. Furthermore, it is well know in the art of provide all information in user profiles to expedite the check out process for buyers.

Applicant's arguments in regards to claims 2, 3, 13, 23 and 24 do not include any specific arguments as to how the language of the claims avoids the references applied against the claims thus the examiner relies on the above rejection and no further response is believed necessary.

In regards to claim 12, applicant relies in claim 12 being dependent from claim 1 thus again; no further response is believed necessary.

Applicant's reference to a proposed Parunak-Berkowitz combination is not understood since the previous office action has no mention of a Parunak-Berkowitz combination.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

This is a RCE of applicant's earlier Application. All claims are unchanged and drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Flemming Saether
Primary Examiner
Art Unit 3677